

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6206 of 2004

Between:

1 Associate Banks' Officers Association, (Unit.SBH) State Bank of Hyderabad
Buildings, Gunfoundry, Hyderabad rep.by its Secretary, Mr.Peri Subba Rao.
2 State Bank of Hyderabad Staff Association Central Office, State Bank of
Hyderabad Buildings, Gunfoundry, Hyderabad, rep.by its General Secretary Sri
K.N.Thigale.

..... PETITIONERS

AND

1 The Union of India, Rep.by its Secretary, Ministry of Finance, New Delhi.
2 The State Bank of India, Corporate Office (A& S Group),
Madam Cama Road, Mumbai, rep.by its Chairman.
3 The State Bank of Hyderabad, Head Office, Gunfoundry, Hyderabad,
Rep.by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction especially in the nature of Writ of Mandamus directing that the 3rd respondent bank has no power or right of any kind to divert or reverse un-utilised amount out of 3% of the published net profit funds every year allocated for implementing staff welfare schemes and consequently, direct the 3rd respondent to utilise 3% published net profits for implementing the staff welfare schemes of 3rd respondent every year and if part of the said amount is unutilised during any particular year, it may be carried over to the succeeding years for utilising it for the same purpose and pass all necessary orders for the said purpose.

Counsel for the Petitioners :MR. MOVVA CHANDRASHEKAR RAO

Counsel for the Respondent No.1 : SMT.A.P. LAKSHMI (SC FOR Q.Q.S.U.D.A)

Counsel for the 2nd respondent : Mr. A.Krishnam Raju

Counsel for the 3rd respondent : Mr. V.Parabrahma Sastri

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.6206 OF 2004

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ORDER :

The petitioners who claim to be the associations and recognised unions of the employees of the third respondent Bank

seek a Writ of Mandamus declaring that the third respondent – State Bank of Hyderabad, has no power or right of any kind to divert the unutilised amount out of 3% of the published net profits every year allocated for implementing the Staff Welfare Schemes and for a consequential direction to the third respondent to utilise the 3% of the published net profits for implementing the staff welfare schemes every year and in case any part of the said amount is unutilised during any particular year, the same shall be carried over to the succeeding years for utilising it for the same purpose.

It is to be noted that the Government of India formulated certain welfare schemes for

the purpose of Public Sector Banks as communicated to the Chief Executives of the Public Sector Banks by the Ministry of Finance, Department of Economic Affairs (Banking Division) vide letter dated 01-08-1996. In pursuance thereof, the Indian Banks' Association by letter dated 12-08-1997 advised all the Public Sector Banks that they should earmark maximum of 3% of their net published profits of the preceding year for welfare activities subject to a ceiling of Rs.10 crore per annum and that the amount so allocated should be utilised in the following manner.

1. *The amount should cover expenditure on all activities which are outside the purview of industrial settlements / Officers' Service Regulations.*
2. *The facilities provided should be utilised in welfare schemes for employees and should not at any stage become a source of income for an employee.*
3. *In the banks which are currently loss making or where profits are inadequate for the time being the existing schemes should be reviewed and schemes which are not in accordance with guidelines stated below should be discontinued. Other schemes, which are not dispensable, may be frozen at the existing level for next 3 years or till the bank starts showing profits whichever is earlier, after which the bank will have to restrict expenditure on the welfare activities to 3% of the published net profits or Rs.10 crores per annum, whichever is less.*
4. *Within the available funds the powers to decide / continue / discontinue / modify or introduce new scheme & freeze existing schemes shall vest with the Board of the Bank.*

The guidelines regulating the said welfare funds were also specified in the said letter as under :

- a. *Each bank shall set up a Committee approved by the Board for the purpose which should draw up a scheme of welfare activities in the bank. The scheme should be transparent and well defined.*
- b. *There should be a proper administrative set up for administering the welfare activities.*
- c. *Allotments under various heads of welfare scheme should be made by the apex level committee at the beginning of the year.*

- d. *Welfare schemes of any kind should not involve payment of cash to members of staff except by way of merit based awards, prizes and scholarships.*

In the said letter, it was also mentioned that the Government desires that the said order should come into force with immediate effect and that an annual review report may be submitted before the Board of the Bank and a copy of the review along with Board's observations should also be sent to the Government.

It is not in dispute that even before the said scheme was issued, the third respondent constituted a Staff Welfare Committee consisting of elected office-bearers and the said committee has been continuing to implement the scheme as per the guidelines from 1997 onwards. It is also not in dispute that the third respondent Bank has been utilising upto 3% of the net profits published every year from 1997 onwards. However, the only grievance of the petitioners is that the third respondent Bank has not been fully utilising the 3% amount required to be earmarked for the welfare measures of the staff and it has been reversing a considerable portion of the unutilised amount to its profit and loss account. The petitioners contend that the 3% of the net profits earmarked should be utilised only for implementing the staff welfare measure schemes and cannot be diverted for any other purpose or reverted to the profit and loss account of the Bank. According to them, if any portion of the amount is unutilised due to some reason or other the unutilised amount has to be carried forward for utilisation for implementing staff welfare schemes in the succeeding years. It is alleged that whereas the other Banks have been strictly implementing the scheme, by fully utilising the earmarked 3% of the profits for the welfare schemes of their employees, the third respondent Bank failed to do so. It is pleaded that during the financial year 2002-03, the third respondent Bank has earmarked a sum of Rs.9.02 crore representing 3% published net profits as on 31-03-2003 for the purpose of implementing welfare schemes of its staff, however, only about Rs.6 crore of the allocated amount was utilised during the year 2002-03 and the balance of about Rs.3.02 crore was about to be reversed to the profit and loss account of the third respondent Bank as was done during the previous years. It appears that the petitioner sent a representation dated 25-03-2004 to the second respondent Bank asserting that the 3% of profits earmarked towards

welfare fund must legitimately accrue only to the staff welfare and requesting that the substantial amount of about Rs.3 crore which is still unspent may be utilised for construction of a Holiday Home/Auditorium as proposed by the welfare committee. Alleging that their request has not been considered and apprehending that the unspent amount will be reversed to the profit and loss account of the third respondent Bank, this writ petition has been filed seeking the above relief.

The third respondent Bank filed a counter-affidavit stating that the Bank is implementing all the contemplated and requisite welfare measures in a bona fide manner. The Bank has not at any time wrongly reduced the needed expenditure on the welfare measures. It has been doing its best to safeguard the interests of staff welfare. The representation of the petitioners dated 25-03-2004 is highly belated and was made during the closing period of the accounting year. However, it will be duly considered on its merits in the course of time. For the year 2003-04, accounts are already settled and closed. It is also stated that the Bank every year is budgeting / providing upto 3% of the net profits for spending under various staff welfare schemes. During the year 2002-03 an amount of Rs.679.47 lakh was budgeted for various welfare schemes and an amount of Rs.363.52 lakh was spent. Similarly, during the year 2003-04 an amount of Rs.902 lakh was budgeted and Rs.575.09 lakh was spent for various welfare activities. The budgeted amount provided for welfare schemes is not kept in any separate account. The Bank only agrees to spend upto maximum 3% of the profits on welfare schemes and that the amounts are spent by following the guidelines issued by the IBA/ Government of India. The details as to how the 3% of the net profits of the year 2002-03 was budgeted for the welfare schemes have been furnished and it is explained that due to non-materialisation of one of the schemes namely insurance coverage for hospitalization expenses, the budgeted amount under the said head was not spent by the Bank. However, the Bank has met the entire expenditure for reimbursement of hospitalisation expenses to the staff members as per their eligibility by debiting to the charges account. Further, for framing new schemes and to meet contingencies, an amount of Rs.135-60 lakh was provided. However, since no new schemes were framed by the welfare committee during this year, this amount could not be spent. Thus, it was pleaded that the writ petition is without any merit and liable to be dismissed.

I have heard the learned Counsel for both the parties and perused the material on record.

Having regard to the submissions made by both the parties, the only question that arises for consideration is whether the third respondent is bound to set apart 3% of the net profits towards the welfare schemes and whether in case a part of such amount remains unspent is it mandatory to carry forward such unspent amount to the succeeding year.

On a perusal of the letter of the Indian Banks' Association, dated 12-08-1997, under which the decision of the Union of India was communicated to all the Public Sector Banks, it is clear that all the Public Sector Banks are obligated to earmark maximum of 3% of their net published profits of the preceding year for welfare activities subject to a ceiling of Rs.10 crore per annum. The guidelines regulating such welfare funds have also been specified in the said letter and it is not in dispute that the third respondent Bank has been utilising the amounts for welfare schemes in accordance with the guidelines. The counter-affidavit filed by the third respondent shows that 3% of the net profits of every year subject to the ceiling of Rs.10 crore is being budgeted for welfare schemes as per the recommendations of the welfare committee every year. It is not the case of the petitioners that in spite of their request, the third respondent Bank has failed to spend the said amount as per the budget nor there is any allegation that welfare measures recommended by the committee were not implemented. However, the contention is that the unspent amount should be carried forward to the succeeding year. It is to be noted that the guidelines specified in the letter dated 12-08-1997 do not provide for such carrying forward of the unspent amount. As a matter of fact, it cannot be said that under the scheme in question the Banks should create a separate fund for the welfare measures. On the other hand, the expression that "*the Public Sector Banks should earmark maximum of 3% of their net published profits*" make it clear that the Government of India has only intended that the Public Sector Banks shall spend for the welfare schemes upto 3% of the profits of the preceding year. In other words, the Bank has to meet the actual expenditure for the welfare schemes to a maximum of 3% of the net profits of the

previous year. The learned Counsel for the petitioner while relying upon the dictionary meaning of “earmark” contended that the word “earmark” shall mean to set aside for special purpose or to reserve for definite purpose. There can be no dispute about the meaning of expression “earmark”, however, in the context in which the said word was employed in the scheme in question, I am of the view that the Union of India while formulating the scheme has only intended to utilise the net profits to the maximum of 3% subject to ceiling of Rs.10 crore for welfare measures. There is absolutely no warrant or justification to interpret that it is mandatory for the Banks to create a fund with 3% of net profits. Consequently, it should follow that the 3rd respondent is not bound to carry forward the unspent amount, if any, to the succeeding year.

For the aforesaid reasons, I do not find any justifiable reason to hold that the procedure being adopted by the third respondent Bank in implementing the scheme in question is either arbitrary or illegal or in contravention of the guidelines prescribed by the Union of India. Absolutely, no case is made out to show that the petitioners acquired any legal right to insist that the unspent amount out of the 3% of net profits of the preceding year shall be carried forward to the succeeding year. Hence, the Mandamus as sought cannot be issued compelling the third respondent Bank to carry forward the unspent amount to the succeeding year.

However, it is made clear that it is always open to the petitioners to take appropriate steps for implementation of the budgeted amount for the purpose of welfare schemes. In case any such representation is made by the petitioner Associations for implementation of the welfare schemes, the third respondent Bank shall consider the same and take expeditious steps in accordance with the scheme formulated by the Union of India.

The Writ Petition is accordingly disposed of. No costs.

24th January, 2005.

gbs

To

- 1 The Secretary, Union of India, Ministry of Finance, New Delhi.
- 2 The Chairman, State Bank of India, Corporate Office (A& S Group),
Madam Cama Road, Mumbai.
- 3 The Managing Director, State Bank of Hyderabad, Head Office, Gunfoundry,
Hyderabad.

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